UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COLLEGE RECOVERY, LLC	:	INDEX NO.
Plaintiff,	:	
-against-	:	**COMPLAINT FOR DECLARATORY JUDGMENT**
SOBER COLLEGE ENVIRONMENTS, LLC	:	**JURY TRIAL REQUESTED**
Defendant.	:	

Plaintiff College Recovery, LLC ("College Recovery"), by and through its undersigned counsel, brings this action against Sober College Environments, LLC ("SCE") (collectively, "SCE") (College Recovery and SCE, collectively the "Parties" and each individually a "Party"). College Recovery alleges as follows in support of its action for declaratory judgment:

NATURE OF THE ACTION

1. SCE is attempting to use the Federal Trademark Statute, the Lanham Act (15 U.S.C. § 1051 *et seq*.), together with state statutory and common law, to achieve a business goal, namely hampering a legitimate competitor's ability to conduct its business.

2. This is an action pursuant to 28 U.S.C. §§ 2201 and 2202 for a declaration that College Recovery has not and will not infringe upon SCE's trademark, SOBER COLLEGE, or otherwise violate any state or federal statute, through its use of the name SOBA College Recovery.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because there exists complete diversity of citizenship between plaintiff College Recovery and defendant

SCE, and the amount in controversy exceeds the jurisdiction requirement exclusive of costs and interest. This Court also has subject matter jurisdiction to the extent the claims relate to claims of federal trademark infringement, under 15 U.S.C. § 1121, 28 U.S.C. § 1338 and 28 U.S.C. § 1331, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367, as all of the claims are related to the allegations of federal trademark infringement. This Court has the authority to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). Upon information and belief, a substantial part of the events giving rise to this claim occurred in the District of New Jersey; the services that are the subject of this litigation are and will continue to be offered for sale and/or distribution in the District of New Jersey; plaintiff College Recovery is a New Jersey corporation that does substantial business in the District of New Jersey; and defendant SCE sent its letter threatening litigation to College Recovery in the District of New Jersey.

5. This Court has personal jurisdiction over SCE because it sent its letter threatening litigation to College Recovery in the District of New Jersey.

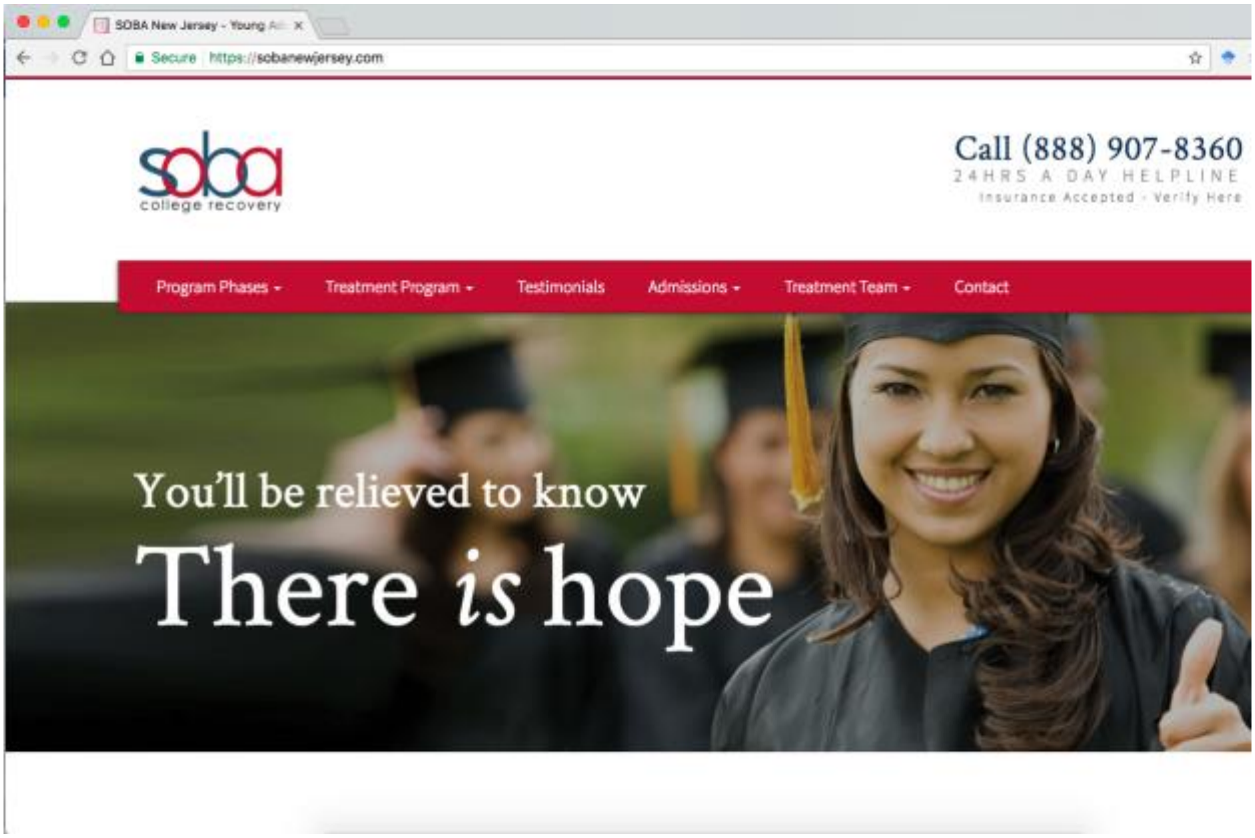
PARTIES

6. Plaintiff College Recovery is a New Jersey limited liability corporation, with a principal place of business at 104 Bayard Street, New Brunswick, NJ, 08901. College Recovery operates a substance abuse treatment center at, and runs substance abuse programs from, that address.

7. Upon information and belief, Defendant SCE is a California limited liability corporation, with a principal place of business of 6233 Variel Ave., Woodland Hills, California 91367.

FACTUAL BACKGROUND

8. College Recovery operates a single addition treatment center in New Brunswick, New Jersey, and maintains a website at www.sobanewjersey.com. College Recovery operates its center and offers treatment programs under the name SOBA College Recovery, as reflected in this screen shot:


SOBA New Jersey - Young A
Secure https://sobanewjersey.com
soba
college recovery
Call (888) 907-8360
24HRS A DAY HELPLINE
Insurance Accepted - Verify Here
Program Phases
Treatment Program
Testimonials
Admissions
Treatment Team
Contact
You'll be relieved to know
There is hope

9. College Recovery is affiliated with a national chain of SOBA-branded treatment centers and other enterprises, including the SOBA Recovery Center (Malibu, CA), Club SOBA (Los Angeles, CA), SOBA MESA (Arizona), SOBA TEXAS (San Antonio), and now SOBA College Recovery (New Brunswick, NJ):

10. The SOBA brand dates back to as early as 2007, when its founder began using the moniker in connection with the treatment of various forms of addiction among both professionals and students, beginning with the SOBA Malibu treatment center.

11. The SOBA brand has existed and flourished in California and elsewhere continuously and without challenge for a decade, serving the addiction needs of adults and

students. As a result, the SOBA brand has achieved recognition and secondary meaning among the relevant consuming public, not just in California but across the country. The addition of SOBA College Recovery is a further expansion of the SOBA brand to the New Brunswick, New Jersey region.

12. On or about October 5, 2016, SCE's counsel, wrote a letter to College Recovery, a copy of which is annexed hereto as Exhibit A. In the letter, SCE accused College Recovery of federal trademark infringement and unfair competition, and demanded that College Recovery:

> Immediately discontinue all use of the name and mark "SOBA COLLEGE RECOVERY" and/or any confusingly similar variation thereof; and
>
> Immediately remove/withdraw and destroy all signs, website references, advertisements, brochures, flyers, and other promotional or sales materials of any kind that mention the name and mark "SOBA COLLEGE RECOVERY", or any other confusingly similar name or mark.

13. SCE's counsel demanded a response by October 17, 2016, hinting at the possibility of legal action: "If our client is forced to pursue legal action in the United States District Court, injunctive relief and punitive damages will be sought, along with all other remedies available to it by law."

14. On January 4, 2017, SCE's counsel sent an identical letter to College Recovery (Exhibit B hereto), once again demanding that College Recovery take the foregoing actions, this time by the deadline of January 16, 2017.

15. On January 27, 2017, SCE's counsel wrote to College Recovery for the third time (Exhibit C hereto). This time, however, SCE changed its tone, writing: "We urge you to give this matter your prompt attention and to respond completely to our correspondence no later than Monday, **February 6, 2017**. Otherwise, we will recommend that our client consider all options, including taking legal action."

16. SCE is unmistakably threatening to initiate litigation against College Recovery, on or after February 6, 2017, without further notice, unless College Recovery agrees to all of SCE's demands. College Recovery has no intention of doing so, as the allegations in SCE's letter are wholly without merit.

ANALYSIS OF SCE'S ALLEGATIONS AND DEMAND

17. SCE owns U.S. Registration No. 3,323,240 (the "SCE Trademark") for COLLEGE RECOVERY. SCE claims a date of first use in commerce of January 15, 2006, and the mark was registered October 30, 2007.

18. Based upon the limited information available to College Recovery, and as set forth below, the allegations raised by SCE in its various letters are without merit.

19. First, there is no likelihood of consumer confusion between the relevant consumers of College Recovery and SCE. This is so because of several distinguishing factors, which include, but are in no way limited to:

a. Both College Recovery and SCE deliver their services to customers in-person, rather than virtually or remotely;

b. College Recovery serves the population in the area of New Brunswick, New Jersey, while SCE operates exclusively in California;

c. The strong secondary meaning behind the SOBA brand in the addiction space significantly reduces any potential confusion; and

d. SCE has not suggested there has been any actual confusion among the relevant consuming public.[1]

20. Second, SCE's mark, while incontestable, is very weak. The second word of the

[1] The obvious form-letter nature of the identical October 2016 and January 2017 letters suggests that SCE has not done any of the real work necessary to determine whether confusion is occurring, or even likely.

mark – COLLEGE – is disclaimed, because the U.S. Patent and Trademark Office advised SCE that it was unprotectable. Any argument rooted in the use of the completely generic or descriptive word "college" has little to no merit. The other work of the mark – SOBER – while not disclaimed, is at best suggestive of the services provided by SCE. College Recovery's use of SOBA, reflects an effort by College Recovery and the SOBA brand to actually create a distinct and unique marketplace impression that is highly unlikely to be confused with other addiction services who may choose to use generic or descriptive terms like "sober."

21. Because SCE owns an incontestable trademark registration for SOBER COLLEGE, College Recovery does not at this time challenge the validity of the SCE Trademark. SCE reserves the right, however, to seek cancellation of the SCE Trademark upon the discovery of facts supporting cancellation under 15 U.S.C. §§1065 or 1115(b), including but not limited to facts showing that the SOBA marks were used in commerce prior to the SCE Trademark, that the SCE Trademark was not being used in commerce by the date claimed, that the SCE Trademark registration or incontestable right to use the mark was obtained by fraud, or that SCE's claims are barred by laches, estoppel or acquiescence.

CLAIM FOR RELIEF

COUNT I
(Declaratory Relief)

22. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

23. Defendant SCE's allegations, demands and the explicit threat of imminent legal action against plaintiff College Recovery represents an undue hardship to plaintiff.

24. SCE's allegations, demands and the explicit threats of imminent legal action

against plaintiff College Recovery have created an actual and justiciable controversy that is ripe for determination.

WHEREFORE, plaintiff College Recovery respectfully seeks a judgment by this Court as follows:

1. A declaration that SCE does not own a valid trademark, or have any legitimate interest or rights in the name "SOBA College Recovery";
2. A declaration that SCE has no legal basis to prevent others from using names that include the words "sober" and/or "college" and/or variants of same;
3. A declaration that College Recovery's past and ongoing conduct in connection with the name "SOBA College Recovery" do not constitute infringement of SCE's trademark rights under 15 U.S.C. § 1114(1);
4. A declaration that College Recovery's past and ongoing conduct in connection with the name "SOBA College Recovery" do not constitute false advertising under 15 U.S.C. § 1125(a);
5. A declaration that College Recovery's past and ongoing conduct in connection with the name "SOBA College Recovery" do not violate any of SCE's rights under any other federal statute, state statute or common law;
6. A declaration that SCE is not entitled to any injunctive relief against College Recovery's use of the name "SOBA College Recovery";
7. A declaration that SCE is not entitled to recover any monetary damages as a result of Plaintiff College Recovery's past and ongoing conduct in connection with the name "SOBA College Recovery";

8. That SCE pays College Recovery's attorneys' fees and costs of this suit; and

9. For such other and further relief to College Recovery as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues for which a right to a jury trial may exist.

Dated: New York, New York.
February 8, 2017

/s/ Hillel I. Parness

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